

## **Delegation to Washington D.C. 16-18 July 2018**

### **MISSION REPORT**



Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance  
(TAX3)

## 1. Programme

Monday, 16 July 2018

Time	Institution/Host	Topics
08:30-10:00	Briefing by David O'Sullivan, EU Ambassador in Washington, and Antoine Ripoll, Head of the EP Liaison Office	<ul style="list-style-type: none"> <li>) Briefing on EU and US matters</li> <li>) Developments in the field of financial market regulations and taxation</li> </ul>
10:15-11:30	Meeting with Gary Kalman, Executive Director of the FACT Coalition	<ul style="list-style-type: none"> <li>) Briefing on current US politics involving tax, money laundering, beneficial ownership and related issues;</li> <li>) Different approaches in the fight vs money laundering;</li> <li>) Corporate ownership reporting rules;</li> </ul>
11:45-12:45	<p>Meeting with US tax experts</p> <p>Lilian Faulhaber, Associate Professor of Law, Georgetown Law School</p> <p>Eric Toder, Institute Fellow and Co-director, Tax Policy Center</p>	<ul style="list-style-type: none"> <li>) Digital Taxation</li> <li>) OECD BEPS implementation in the US</li> <li>) Public country-by-country reporting of corporate income tax by companies</li> <li>) FATCA</li> <li>) US Tax Reform</li> </ul>
14:30-15:30	Meeting with Jamal El-Hindi, FinCEN Deputy Director	<ul style="list-style-type: none"> <li>) EU-US cooperation against money laundering</li> <li>) risk and challenges of crypto-currencies connected to money laundering</li> <li>) Financial supervision powers of the institution: investigative powers, punitive powers, extraterritorial jurisdiction, etc.</li> <li>) EU-US cooperation within FATF</li> </ul>

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16:00-17:15	Meeting with ICIJ journalists  Marina Walker, ICIJ deputy director  Will Fitzgibbon, ICIJ Reporter	<ul style="list-style-type: none"> <li>) Works done by ICIJ on Panama and Paradise Papers</li> <li>) Cooperation TAX3- journalists</li> <li>) US reaction to Panama and Paradise Papers reaction and eventual differences with EU</li> <li>) Anonymised cases</li> </ul>
18:00	Transatlantic Week Opening Reception Hosted by David O'SULLIVAN, EU Ambassador to the US	

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Tuesday, 17 July 2018

Time	Institution/Host	Topics
8:30-9:45	<p>Meetings with International Monetary Fund (IMF)</p> <p>Nadim Kyriakos-Saad</p> <p>Michael Keen, Deputy Director Gerd Schwartz, Deputy Director Victoria Perry, Assistant Director Ruud de Mooij, Division Chief, Tax Policy Division Alexander Klemm, Deputy Division Chief, Tax Policy Division David Amaglobeli, Advisor to the Director</p>	<p>Legal Department:</p> <ul style="list-style-type: none"> <li>) AML aspects of cryptocurrencies</li> </ul> <p>Fiscal Affairs Department :</p> <ul style="list-style-type: none"> <li>) Fight against tax evasion and tax avoidance at global level</li> <li>) Spillovers in International Corporate Taxation</li> <li>) Digital taxation</li> </ul>
10:20 - 10:45	Rep. Steve Pearce (R-NM), House Financial Services Committee, Chairman of the Subcommittee on Terrorism and Illicit Finance	<ul style="list-style-type: none"> <li>) US Tax Reform</li> <li>) Digital Taxation: reaction of Congress</li> <li>) public country-by-country reporting of corporate income tax by companies: reaction of Congress</li> </ul>

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		<ul style="list-style-type: none"> <li>) Fight against Money Laundering within the US: corporate ownership reporting rules; shell companies</li> <li>) US reaction to EU and OECD lists of tax havens, sanctions against tax havens, negotiating approach towards countries with potential harmful tax systems, cooperation against proliferation of tax havens</li> <li>) Fight against tax evasion</li> <li>) FATCA: reciprocity in exchange of information?</li> </ul>
11:00 - 11:30	Rep. Peter Roskam (R-IL), House Ways and Means Committee, Subcommittee on Tax Policy	<ul style="list-style-type: none"> <li>) US Tax Reform</li> <li>) Digital Taxation: reaction of Congress</li> <li>) public country-by-country reporting of corporate income tax by companies: reaction of Congress</li> <li>) Fight against Money Laundering within the US: corporate ownership reporting rules; shell companies</li> <li>) US reaction to EU and OECD lists of tax havens, sanctions against tax havens, negotiating approach towards countries with potential harmful tax systems, cooperation against proliferation of tax havens</li> <li>) Fight against tax evasion</li> <li>) FATCA: reciprocity in exchange of information?</li> </ul>
11:45-12:30	House Ways and Means Committee  Barbara Angus, Chief Tax Counsel	<ul style="list-style-type: none"> <li>) US Tax Reform</li> <li>) Digital Taxation: reaction of Congress</li> <li>) public country-by-country reporting of corporate income tax by companies: reaction of Congress</li> <li>) Fight against Money Laundering within the US: corporate ownership reporting rules; shell companies</li> </ul>

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		<ul style="list-style-type: none"> <li>) US reaction to EU and OECD lists of tax havens, sanctions against tax havens, negotiating approach towards countries with potential harmful tax systems, cooperation against proliferation of tax havens</li> <li>) Fight against tax evasion</li> <li>) FATCA: reciprocity in exchange of information?</li> </ul>
14:00-15:30	<p>Meeting with Congressional Research Service (CRS)</p> <p>Jane Gravelle, Government and Finance Division</p>	<ul style="list-style-type: none"> <li>) US Tax Reform</li> <li>) Digital Taxation: reaction of Congress</li> <li>) public country-by-country reporting of corporate income tax by companies: reaction of Congress</li> <li>) Fight against Money Laundering within the US: corporate ownership reporting rules; shell companies</li> <li>) US reaction to EU and OECD lists of tax havens, sanctions against tax havens, negotiating approach towards countries with potential harmful tax systems, cooperation against proliferation of tax havens</li> <li>) Fight against tax evasion</li> <li>) FATCA: reciprocity in exchange of information?</li> </ul>
16:15 - 17:30	<p>Meeting with Apple</p> <p>Phil Bullock, Global Head of Tax (also attending: Julia McRae, Director of Tax, EMEIA) Claire Thwaites, Senior Director Government Affairs, Europe &amp; Russia Noreen Krall, Legal Josh Rosenstock, Director of Communications Christian Riis-Madsen, Legal)</p>	<ul style="list-style-type: none"> <li>) Digital taxation</li> <li>) Public Country - by-country reporting on corporate income tax</li> <li>) impact of their tax planning in EU</li> </ul>

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17:35-18:15	Meeting with Joshua Kirschenbaum, senior fellow at German Marshall Fund's Alliance for Securing Democracy	<ul style="list-style-type: none"> <li>) Proposals for the discussion of a central EU AML authority</li> <li>) Covering banks vs non-banks and eurozone vs non-eurozone countries</li> <li>) Recent developments in Cyprus, Estonia, Latvia, and Malta</li> <li>) Financial intelligence information sharing between the U.S. and the EU</li> </ul>
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Wednesday, 18 July 2018

Time	Institution/Host	Topics
08:30-09:30	Meeting with Richard E. Zuckerman, Principal Deputy Assistant Attorney General, US Department of Justice, TAX Division (also attending from the US Dept. of Justice: Travis A. Greaves, Deputy Assistant Attorney General; David A. Hubbert, Deputy Assistant Attorney General; Stuart M. Goldberg, Senior Counselor to the Assistant Attorney General; Eileen M. Shatz, Senior Counselor to the Assistant Attorney General; Charles M. Edgar, Jr., Counsel to the Principal Deputy Assistant Attorney General; Hilarie E. Snyder, Counsel to the Deputy Assistant Attorney General; Nathaniel S. Pollock, Counsel to the Deputy Assistant Attorney General; Jacob E. Christensen, Counsel to the Deputy Assistant Attorney General; Thomas J. Sawyer, Senior Litigation Counsel; Nanette L. Davis, Senior Litigation Counsel; Mark F. Daly, Senior Litigation Counsel; Kimberle E. Dodd, Attorney)	<ul style="list-style-type: none"> <li>) OECD BEPS implementation and role of the tax division in its enforcement in the US</li> <li>) US Tax Reform with regard to criminal enforcement</li> <li>) Different approaches in the fight vs money laundering; corporate ownership reporting rules; shell companies</li> <li>) Fight against tax evasion and tax avoidance and global cooperation, especially with the EU</li> <li>) Cooperation with US Treasury and distribution of competences</li> </ul>

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10:15-11:30	<p>US Department of the Treasury</p> <p>I. Tax Policy: Chip Harter, Deputy Assistant Secretary (International Tax Affairs) Dan Winnick, Attorney Advisory, Office of the International Tax Counsel Kamela Nelan, Attorney Advisory, Office of the International Tax Counsel</p> <p>II. Terrorism and Financial Intelligence: Sarah Runge, Director for the Office of Strategic Policy (OSP) – Terrorist Financing and Financial Crimes (TFFC) (also attending: Emery Kobor, Deputy Director for OSP/TFFC Scott Rembrandt, Associate Director for OSP/TFFC Young Lee, Policy Advisor – OSP/TFFC Allison LeBlanc, Policy Advisor – OSP/TFFC Crina Ebanks, Policy Advisor – OSP/TFFC)</p>	<p>) US Tax Reform</p> <p>) OECD works in the field of taxation and particularly BEPS</p> <p>) Digital taxation</p> <p>) US reaction to EU and OECD lists of tax havens, sanctions against tax havens, negotiating approach towards countries with potential harmful tax systems, cooperation against proliferation of tax havens</p> <p>) Public Country by Country Reporting of corporate income tax by companies: reaction in US</p> <p>) FATCA</p>
12:00-13:00	<p>Meeting with James Brumby, World Bank Governance Director</p>	<p>) Fight against tax evasion and tax avoidance at global level</p> <p>) digital taxation</p> <p>) Impact of tax evasion and tax avoidance on developing countries</p> <p>) BEPS implementation and need for more?</p>

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### 1. LIST OF PARTICIPANTS

Members	Language	Group
Petr JEZEK, Chair	CS	ALDE
Ludek NIEDERMAYER, Co-Rapporteur	CS	EPP
Jeppe KOFOD, Co-rapporteur	DA	S&D
Ivan ŠTEFANEC	SK	EPP
Paul TANG	NL	S&D
Wolf KLINZ	DE	ALDE
Sven GIEGOLD	DE	Greens
Barbara KAPPEL	DE	ENF

TAX3 Secretariat	
Benoit WETS	
Francisco RUIZ-RISUENO	
Political advisers	Group
Jan WISSWAESSER	EPP
Frantisek NEJEDLY	Greens
Jeremy VAN GORP	ALDE
European Parliament Liaison Office to the US Congress (EPLO), Washington	
Radostina PARENTI	
Christopher COAKLEY	

## 2. KEY MESSAGES

### KEY FINDINGS FROM DELEGATION VISIT:

#### Main issues discussed:

- The US tax reform might be in some points incompatible with the WTO agreement. However, the US administration does not intend to introduce any change unless it is forced by the outcome of a case litigation.
- There is a need to further clarify the principle according to which “taxation takes place where value is created”. Is the place of value creation where an investment is made? Is it where intangible assets are located? Do consumers create value?
- The EU proposals on digital taxation are not well received in the US as well as the state aid cases that included some US companies. They are seen as exclusively targeting US companies and based on false principles.
- On FATCA, it seems unlikely that the current US administration and Congress will commit to a full reciprocal exchange of information on tax matters with the EU.
- There is no appetite in the US for public CBCR or to name and blame countries for bad fiscal practices.
- On beneficial ownership transparency, although in the US this as a State competence (corporate law), there are some moves at federal level, notably following a recent letter sent by the Secretary of State of Delaware to Congress accepting to consider the issue and supporting collecting these data at federal level. The reaction of other US States to this move is critical for further developments on the matter.
- US laws allow for any information exchanged by FINCEN to be used by law enforcement authorities without any additional specific request. FinCEN would favour that this applies also in other countries.
- Cryptocurrencies are increasingly used for money laundering purposes. While the trade of those currencies is already highly regulated in the US, most countries and the EU have not introduced any regulation yet.
- Evidence in the Paradise Papers shows that very well-known banks put intermediaries in difficulties by telling them that they are ultimate beneficial owners (UBO) of a company. Then intermediaries take the risk of starting business with the company because they know that risk is shared with the bank.
- The Panama Papers and the Paradise Paper have not been investigated by the relevant institutions. There has been only very limited reaction by the public.
- There are worrying signals in terms of money laundering in European Eastern Countries.



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**2.1. Briefing at the EU Delegation with Mr David O'Sullivan, EU Ambassador in Washington and Mr Antoine Ripoll, Head of the European Parliament Liaison Office to the US Congress.**

- General presentation on EU-US relations under the Trump administration.
- USA have withdrawn from a series of multilateral organisations and agreements as undertaken by President Trump during his presidential campaign.
- President Trump is benefiting from a well-performing economy and continues what he claims to be a deregulation programme. His position is quite strong within the Republican Party at the moment, despite events surrounding his Presidency.
- It seems difficult to predict the outcome of next mid-term elections. Results might give Democrats a majority at the House, but the party is not in good shape. Internal discussions are ongoing within the party whether they should move to the left, centre or whether they should follow one person, such as Michael Bloomberg.
- President Trump is not an isolated person in the US and his isolationism ideology seems popular and supported by many. Even if he is not re-elected, chance is high that things will not go back to old-time policy.
- President Trump seems to speculate that with such a strong economy he can afford a "trade war". His objective is to reduce imports from the EU and repatriate manufacturing jobs, particularly in the motor industry. Trade barriers currently implemented only cover 1 % of trade. If trade barriers are implemented on aluminium this might be more problematic. Particularly Germany is being seen as a strong economic competitor.
- On the recent US Tax reform, it seems legitimate for the US to repatriate US profits abroad and tax them under US tax law. US will probably not change its reform to accommodate possible WTO concerns. They will wait for the outcome of any litigation before modifying it.

**2.2. Meeting with Mr Gary Kalman, Head of the Financial Accountability and Corporate Transparency (FACT) Coalition**

- Paradise and Panama papers have not raised big attention in the US. In any case, the Paradise Papers seem to concern more multinational corporations' avoidance practices whereas the Panama Papers seem to mainly deal with illegal tax practices.
- Not everybody in the US is convinced that corporate income tax should exist. Some congressmen already proposed that it should be replaced by a higher

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taxation of dividends. For some people, the only reason why corporate income tax still exists is that no income replacement has been found yet.

- US Tax reform: FACT considers that it will not help fight against aggressive tax planning and that the act will prove to be weak in practice.
  - o The Base Erosion and Anti-Abuse Tax (BEAT) introduced by the new legislation will still be half (10 %) of normal tax rate (21%) and therefore there will still be an incentive to move profits.
  - o The “repatriation” tax imposed on multinationals gives them as long as eight years to pay the new levy with no interest or penalties. If a company pays the tax within 8 years, no interest or penalty will be imposed on it, which, according to FACT, is a big advantage to multinationals.
- FACT has no position on the level of tax rate; their concern is that taxes are paid in accordance with the existing rates.
- Concerning public CBCR, the majority does not seem to see this measure positively. According to FACT, social insurance premiums have increased more than the benefit people could receive from the Tax Reform.
- Automatic Exchange of Information (AEOI): FATCA will still continue to be without reciprocity. The FACT Coalition would support reciprocity but they do not see this happening in the near future
- The sustainability of the US tax reform is doubtful. Many assistance programmes have already been terminated or drastically cut.
- Ultimate Beneficial Ownership (UBO) disclosure:
  - o Congressman Pearce tabled a bill that would have made UBO disclosure to FIU compulsory. This bill did not pass. FACT is still hopeful that progress could be made after the mid-term elections since security agencies are also pushing for more transparency given the risk posed by anonymous companies in terms of terrorism financing. Private companies fighting against counterfeiting are also active in this area.
  - o Delaware is really a problem in terms of UBO but things are moving. Delaware Secretary of State has recently endorsed a move and agreed to have UBO collection at federal state level.
  - o President Trump has no personal interest to oppose transparency of UBO as he had to disclose all his companies (even anonymous) in the run up of the elections.
- FACT criticised that the exemptions for reasons of national security in CBCR risk to be interpreted broadly by the US authorities and companies.
- On the issue of difference between EU and US, their opinion is that EU has good law but poor implementation and enforcement on the contrary to the US.



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***2.3. Meeting with Ms Lilian Faulhaber, Associate Professor of Law at Georgetown Law School, and Mr Eric Toder, Institute Fellow and Co-director at the Tax Policy Center***

- Both experts confirmed that the implications of the recent US tax reform are not yet fully understood by tax practitioners. Implementing rules from the Treasury are still expected. There is still a lot of uncertainty even at the level of “big four” consultancy firms.

***Eric Toder on the US tax reform***

- He contended that the tax reform is unsustainable. He reported that the Joint Committee on Taxation estimates that the revenues will drastically reduce in the next 10 years.
- He explained the main lines of the US tax reform, notably BEAT and Foreign-Derived Intangible Income (FDII). FDII is a new deduction on the tax due for income generated by relevant sales to non-U.S. customers. It has been introduced in order to encourage U.S. companies to export services and products related to intangible income that is owned in the U.S.
- He explained that the taxation rates on benefit repatriation are: 15 % if repatriation in cash, 8 % if non cash.
- He acknowledged that the FDII and BEAT measures might raise concerns within the WTO.
- There could also be a problem with FDII and the IP rules not in line with OECD modified NEXUS for IP regimes.

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***Lilian Faulhaber on digital taxation***

- On digital taxation: The expert underlined that the OECD Taskforce on Digital Economy has not yet come with any concrete proposal on how to handle the challenges posed by the digital economy on taxation. The interim report of March 2018 examines the multiple unilateral tax rules adopted on digital economy. The report observes that the adoption of such measures reflects a growing discontent among countries with the tax outcomes of the current international tax rules. The EU proposals do not seem to be against international standards.
- She explained the recent US Supreme Court judgment *South Dakota v. Wayfair, Inc. et al.*, decided on 21 June 2018, which allows States to impose tax on corporations even without physical presence on their territory. On the US tax reform:
  - o US has implemented lots of BEPS minimum standards and recommendations (CBCR, anti-hybrid rules, CFC rules, interest limitation ...), which is much better than expected.
  - o US administration is not that worried by a WTO challenge. If it is challenged, some tax measures could be accommodated but nothing will be modified before litigation.
  - o With the US tax reform, US essentially has its patent box (FDII) and it is to be seen whether this is compliant with the OECD standard.

***2.4. Meeting with Mr Jamal El-Hindi, Deputy Director of the Financial Crimes Enforcement Network (FinCEN)***

- FinCEN hires 300 persons (including 86 people of intelligence staff). They receive around 2 million of Suspicious Transactions Reporting (STR) annually.
- FinCEN make risks assessment not by region but by typology of crime.
- Fight against ML rely on work done by banks. FinCEN very much relies on them. FinCEN keeps a very close eye on weak banks that do not do their job in terms of "Know your Customer" (KYC) rules. FINCEN's mandate from Congress is to scrutinise risky credit institutions, even those based outside the US.
- Cryptocurrencies are increasingly used for money laundering purposes. The lack of international minimum standards for cryptocurrencies trading tremendously complicate the work of law enforcement authorities. In this context, FinCEN was critical of the lack of regulation in the EU.
- US laws allow for any information exchanged by FinCEN to be used by law enforcement authorities without any additional specific request. FINCEN would favour that this is also applied by other FIUs.
- UBO disclosure: FinCEN recognises that this is a difficult issue. Financial institutions collect information, while other institutions do not. FinCEN hopes that progress can be made at Congress level.

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- They welcome European registers. Cooperation with law enforcement authorities and other FIUs is crucial.
- Delaware: Companies can be anonymously incorporated in the State of Delaware. However, when they start operations, they need to open a bank account and they are therefore scrutinised by financial institutions under KYC rules. FinCEN however recognises that there might be problems if a company is incorporated in Delaware but has operations outside the US.
- FinCEN did not launch any specific investigation after Paradise Papers, despite names of American companies therein.
- Cryptocurrencies are a big concern for FinCEN. They are regulated in the US but not in many other countries. This implies that very often they can see only one side of the operation. They would see positively legislation on the matter in Europe.

**2.5. Journalists - Meeting with Ms Marina Walker, ICIJ Deputy Director, and with Mr Will Fitzgibbon, ICIJ Reporter**

- They presented two case studies that were anonymised.
- The first case study was about alleged avoidance of VAT on the import of an aircraft in the Isle of Man. This case shows very elaborate business and tax planning schemes, which respecting the letter of the law, go counter its spirit. The purpose of the company's tax structure was to demonstrate that the company owning a jet had business activity in the Isle of Man, according to documents.
- The second case study concerned alleged money laundering activities. The Appleby office in Jersey had refused to accept a business because the scheme presented was considered too risky. However, the same business was accepted by their Mauritius office. The Mauritius office considered that the risk to take was worth and could be defended in the event of any enforcement action or investigation.
- Evidence shows that sometimes very well-known banks put intermediaries in difficulties by telling them that they are UBO of a company. Then intermediaries take the risk of starting business with that company because they know that risk is shared with the bank.
- Journalists state that many actors consider that penalties and public exposure are not dissuasive enough to not start business.
- Journalists see a shift towards the East in terms of use of tax havens: Singapore, Seychelles, Saint Kitts and Nevis, and Dubai.

**2.6. International Monetary Fund - Meetings with Nadim Kyriakos-Saad, Assistant General Counsel, Legal Department, and Michael Keen, Deputy Director, Fiscal Affairs Department.**

Other representatives attending the meetings:

Gerd Schwartz, Deputy Director  
Victoria Perry, Assistant Director



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Ruud de Mooij, Division Chief, Tax Policy Division  
Alexander Klemm, Deputy Division Chief, Tax Policy Division  
David Amaglobeli, Advisor to the Director

- Crypto currencies:
  - o IMF has a special unit dealing with crypto currencies. Its main task is to analyse whether a regulatory framework should be introduced. IMF participates in the discussions of the Financial Action Task Force on Money Laundering (FATF), which is the intergovernmental organisation setting standards in this field.
  - o There is no specific assessment of the risk posed by crypto currencies. However, Europol revealed that 3.5 billion US dollars are laundered through crypto currencies in Europe only. IMF also has clear evidence that crypto currencies are used for ML.
  - o The main risk is at the level of exchanges. There are always new actors or intermediaries entering into what has been called "crypto chain". The main struggle is to be able to regulate all of them.
  - o IMF has not yet an institutional view as to whether some crypto currencies should be banned, even the most anonymous. There is rather a reflection on how to establish an adequate legal framework for crypto currencies, including some identification obligations.
  - o There is no quick fix solution; analysis is still needed. The risk is to set up a "nuclear weapon" that could kill business.
  - o Some countries have introduced bans on crypto currencies but there is no evidence that these countries are less vulnerable or exempted of any risk linked to crypto currencies. There is need of a risk assessment.
- Money laundering and banking supervision:
  - o IMF has made a recommendation for an EU common system of supervision in the area of AML.
- Taxation:
  - o The international tax system is broken with increased globalisation and digitalisation of activities. The "arm's length principle" which is used to calculate the value of a transaction between related companies no longer works. However, an alternative solution has not yet been found. IMF is considering a change of the principle according to which a company cannot be taxed if it is not present in a country. Taxation where the added value is created should be carefully analysed, taking into account the fact that consumers also create added value. Value is not necessarily created in the country where the company is established or has its IP rights. There will be an IMF paper in February.
  - o IMF is not a standard setter and does not envisage taking this role. IMF role is not to blame and shame countries involved in aggressive tax planning.

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- o IMF has just published a report on the spill over effect of US tax reform:  
<https://www.imf.org/en/Publications/WP/Issues/2018/07/13/Tax-Spillovers-from-US-Corporate-Income-Tax-Reform-46055>

## **2.7. Meeting with Mr Steve Pearce, US Representative for New Mexico in Congress (Republicans) and Chairman emeritus of the Congressional Western Caucus**

- Bill on UBO register:
  - o An agreement is still pending in the House because of privacy concerns. It is premature to try to have a vote in committee. The bill includes a 25% threshold (as in the AMLD5 Directive) as indication of direct beneficial ownership, but it also includes a criteria on the size of the activity in the company.
  - o The Constitution does not allow the federal government to impose an obligation on the States to introduce UBO transparency.
  - o Law enforcement authorities are on board.
  - o Reference is made to a letter from Delaware stating that they could move on transparency. It is a good step which would allow putting pressure on Nevada and Wyoming.
  - o In 24 States there is legislation imposing an obligation to yearly update UBO registers. There are public discussions and hearings on how to prevent ML through lax legislation at State level, which shows that things are slowly moving.
- FATCA reciprocity: Congressman Pearce would not be against but states that there might be constitutional obstacles connected to protection of privacy. Most Republicans however would oppose.
- Cryptocurrencies: Organised crime is increasingly using cryptocurrencies and crypto assets to disguise real sources of income. Gaps in national and global legal frameworks prevent an effective fight of authorities against this new form of money laundering.
- Suggestion to cooperate further.

## **2.8. Meeting with Mr Peter Roskam, US Representative in the Congress for Illinois (Republicans)**

- The US had a structural weakness in its tax system. The US tax reform has solved it. There is a common understanding that tax laws will have to be updated more frequently than in the past.
- Congressman Roskam recognises the need for solutions at global level and increased cooperation between countries as it is impossible for one country to solve tax problems on its own. He does not see support for making FATCA fully reciprocal.



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### **2.9. Meeting with Tax Counsel Staff**

- Implementing CBCR is a difficult challenge in the US as there is a need to strike a balance between the rights of tax authorities to obtain information and privacy rights.
- There is no appetite to name and blame countries for bad fiscal practices.

### **2.10. Meeting with Ms Jane Gravelle, Government and Finance Division, Congressional Research Service (CRS)**

- Ms Jane Gravelle and the rest of CRS personnel engaging with the delegation clarified from the outset that they spoke on their own behalf without representing the views of any institution.
- Congress is not aware of many of the tax issues that are high on the EU political agenda.
- FATCA : there is no interest from Congress to modify anything in terms of reciprocity
- Digital taxation: according to CRS taxation should be taxed where investment has been made. Consumers are not investors and do not create value for digital companies. This was a point of big disagreement between CRS and the TAX3 Members. They were also very critical towards the EU state aid cases against US companies, particularly vocal on Apple case.
- US tax reform: the US tax reform will not increase real investment; it will not have any effect on the economy. But it will decrease profit shifting. The effective tax rate will probably not decrease. They however acknowledged that there will be a reaction by other countries which could lead to a race to the bottom. They mentioned that FDI could be considered an export subsidy, and that this could be problematic with regards to WTO agreements.
- Shell companies and UBO registers: it is complicated to act at federal level due to constitutional law. They however recognise that legislations in Delaware, Wyoming and Nevada are problematic. They do not have figures on the number of shell companies incorporated in the US.

### **2.11. Meeting with Apple Inc. - Mr Philip Bullock, Apple Global Tax Director.**

Other representatives attending the meeting:

Julia McRae, Director of Tax

Claire Thwaites, Senior Director Government Affairs, Europe & Russia

Josh Rosenstock, Director of Communications

Christian Riis-Madsen, Legal

- The representatives of the company started by confirming that they would not be in a position to comment on the ongoing Court case concerning alleged state aid.

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- Apple explained that it had already funded 7.5 billion US dollars for the recovery of state aid, and that the full amount will be funded in the coming months. Apple subsequently notified that it had fully funded for an amount in excess of 14 billion euros.
- Apple states that it pays taxes according to the law of the countries where it operates.
- Following the US tax reform, Apple will pay 38 billion US dollars tax on deemed repatriation of accumulated foreign earnings. Apple subsequently notified that it has revised the estimate to 37 billion US dollars. As a result, Apple will have an effective tax rate of 26% for the last decade, which includes both local taxes as well as the US taxes above, but excludes the additional taxes that would arise from the State aid decision, if upheld on appeal.
- According to Apple, this compares with the European Commission's quoted statistic of a 23% effective tax rate for non-digital companies, and, in fact, it is higher than that of some of the smartphone competitors operating in the EU.
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- According to Apple, most of Apple's added value is created in the US. According to the current international tax system, corporate income tax has to be paid in the country where value is created, which they claim to be in their case where R&D is carried out, namely the US.
- Apple supports multi-lateral deliberations to evaluate whether and to what extent that the current international tax system may be adjusted to rebalance corporate income taxation rights. Accordingly, Apple has a preference for a solution at global level.
- Apple is supportive of multilateral tax reforms which would fix and give certainty on the place of taxation.
- Apple complies with non-public CBCR in accordance with OECD standards.
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**2.12. Meeting with Mr Joshua Kirschenbaum, Senior fellow at German Marshall Fund's Alliance for Securing Democracy**

- The discussion focused on recent development in Cyprus, Estonia, Latvia and Malta as regards fight against Money Laundering and supervision of the banking sector. He was supportive of a more centralised oversight of the banking system and of an improvement of the cooperation between FIUs.
- Mr Kirschenbaum stated that there are warning signals as regards the situation in Bulgaria and the Czech Republic. Reference is made to the TBI bank in Bulgaria. ECB and ESMA should look beyond the Eurozone.

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**2.13. Meeting with Mr Richard Zuckerman, Deputy Assistant Attorney General for Criminal Matters and the Division's Principal Deputy Assistant Attorney General**

Other representatives attending the meeting:

Travis A. Greaves, Deputy Assistant Attorney General  
David A. Hubbert, Deputy Assistant Attorney General  
Stuart M. Goldberg, Senior Counselor to the Assistant Attorney General  
Eileen M. Shatz, Senior Counselor to the Assistant Attorney General  
Charles M. Edgar, Jr., Counsel to the Principal Deputy Assistant Attorney General  
Hilarie E. Snyder, Counsel to the Deputy Assistant Attorney General  
Nathaniel S. Pollock, Counsel to the Deputy Assistant Attorney General  
Jacob E. Christensen, Counsel to the Deputy Assistant Attorney General  
Thomas J. Sawyer, Senior Litigation Counsel  
Nanette L. Davis, Senior Litigation Counsel  
Mark F. Daly, Senior Litigation Counsel  
Kimberle E. Dodd, Attorney

- Their task is the enforcement of national tax laws; they also have a new focus on crypto currencies. They closely collaborate with the Internal Revenue Service (IRS).
- On UBO information: Previously, foreign-owned single-member LLCs enjoyed an exemption from US tax reporting requirements. Starting with the 2017 tax year however LLCs that are wholly owned by foreign persons and did not elect to be treated as corporations for tax purposes, are subject to new IRS reporting requirements. Each foreign-owned LLC now must have an EIN (Employer Identification Number) and designate a Responsible Party. The Responsible Party for a single-member LLC is usually the owner of the LLC. It's the person with "control" over the company. The Justice Department considers this to be a big step forward although it also acknowledges that it is not yet equivalent to the international standard. The information is not necessarily communicated to foreign authorities. It might be communicated following a "court order", but the entire process of communication to a foreign authority can take around a year.
- US has an anti-abuse rule that is quite effective. However, it has not yet been extensively used in the transfer pricing area. Transfer pricing constitutes the most important part of litigation, but it is mostly handled by IRS and not the Justice Department.
- Abusive tax practices are favoured by the proliferation of tax shelters. In fact, the more tax shelters exist in legislation (deductions, exclusions, exceptions), the risks of them being used fraudulently increases. Obviously, a distinction must be done between a legitimate use of these shelters and its use under false or deceptive statements.

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- In criminal cases, the Department of Justice sues intermediaries (lawyers, banks and accountants), which imposes heavy fines. They consider that these fines have an important deterrent effect on intermediaries.
- They refer to the "Swiss bank programme" under which 8 banks were under very close scrutiny. In their view, the programme was very effective and produced very good results, also in terms of favouring a mentality change in Switzerland towards more transparency.
- Tax evasion is made normally by two-passport nationals.
- There is always a tension between privacy rights and law enforcement. This becomes more patent in requests to foreign authorities for "fishing expeditions", which are made to conduct investigations that go above the criminal action with the hope of learning more about dubious tax practices and that are often not authorised on privacy concerns.

## **2.14. Meetings at the US Department of the Treasury**

### **Tax Policy team**

Chip Harter, Deputy Assistant Secretary (International Tax Affairs)  
Dan Winnick, Attorney Advisory, Office of the International Tax Counsel  
Kamela Nelan, Attorney Advisory, Office of the International Tax Counsel

- On public CBCR, the Treasury expressed their opposition on privacy grounds. The risks of information being misinterpreted are too high. There are already interpretation problems at the level of tax authorities. They expressed concerns that some countries might use the information to create double taxation as figures will not show where value is created.
- On exchange of information, the Treasury is supportive. FATCA being pioneer in terms of transparency, there are unfortunately some weaknesses. As regards reciprocity, any change would need Congress approval.
- Their position on digital taxation is that the problem is wider than digital economy itself. Taxation of intangibles is and will remain a very big challenge. US will support a global approach at OECD level.
- There has not yet been sufficient political support for moving to a territorial taxation system for individuals.
- They will take WTO possible concerns when implementing the US tax reform.
- They are optimistic that things will improve notably in terms of access to UBO information.

### **Terrorism and Financial Intelligence team**

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Sarah Runge, Director for the Office of Strategic Policy (OSP) – Terrorist Financing and Financial Crimes (TFFC)  
Emery Kobor, Deputy Director for OSP/TFFC  
Scott Rembrandt, Associate Director for OSP/TFFC  
Young Lee, Policy Advisor – OSP/TFFC  
Allison LeBlanc, Policy Advisor – OSP/TFFC  
Crina Ebanks, Policy Advisor – OSP/TFFC)

- Virtual currencies are comprehensively regulated within the US. They welcome AMLD5 but have concerns as regards relatively long implementation period.
- The Treasury is working on a change of the UBO centralised collection of information by financial institutions.

### **2.15. Meeting with Mr James Brumby, World Bank Governance Director.**

- Z Presentation of the World Bank activities in the tax area. Concrete example is given on what is going on in terms of technical assistance in Panama, notably as regards automatic exchange of information. Technical assistance given to ensure that international standards in the tax and ML areas are implemented by developing countries. Assistance is also given on stolen asset (proceeds of corruption) recovery.
- Z Public CBCR is not a priority for developing countries. World Bank's priority is to get CBCR between tax authorities first, possibly with a lower threshold.
- Z Impact of the US tax reform on developing countries: they do not see a big impact, except for those countries who had a business model to attract tax bases that will be taxed in the US through anti-abuse rules.
- Z World Bank insists on AEOI which needs to be reciprocal. This needs security of IT systems to ensure that information is kept confidential. They provide assistance upon request.
- Z World Bank's key priority is to get out of cash economy (which can amount to 60-80% in some countries) and to promote "financial inclusion" as a means to reduce poverty and boost prosperity. Individuals and businesses should have access to useful and affordable financial products and services that meet their needs – transactions, payments, savings, credit and insurance – delivered in a responsible and sustainable way.
- Z Not in favour of naming and shaming countries which are key players in the tax evasion or money laundering areas.
- Z Developing countries are the main losers of tax havens.